

COOPERATIVE AGREEMENT
FOR
MANAGEMENT OF GROUND WATER RESOURCES
IN THE SOUTHEASTERN PENNSYLVANIA GROUND WATER
PROTECTED AREA

ME 8041

THIS AGREEMENT is entered into as of the 22nd day of December, 1980, by the COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, ("DEPARTMENT"), and the DELAWARE RIVER BASIN COMMISSION, P. O. Box 7360, West Trenton, New Jersey 08628, ("COMMISSION").

WHEREAS, use of ground-water resources in the Triassic Lowland and adjacent areas in southeastern Pennsylvania has increased substantially in recent decades; and

WHEREAS, interference and conflicts among users of the same ground-water resource in the area has become more frequent, giving rise to administrative and legal proceedings before regulatory bodies and in the courts; and

WHEREAS, in June 1979 and June 1980, the COMMISSION held a series of hearings to receive public comment and suggestion as to the extent of ground-water related problems in the area, and whether and to what extent the COMMISSION should establish special regulations to provide improved regional management of the limited water resources; and

WHEREAS, as a result of hearings, public representatives, water purveyors and private citizens urged the COMMISSION to utilize its authority under Article 10 of the Delaware River Basin Compact to prevent depletion of ground water, protect the just and equitable interests and rights of lawful users of the same water source, and balance and reconcile alternative and conflicting uses of limited water resources in the area; and

WHEREAS, in accordance with Article 10 of the Delaware River Basin Compact, the COMMISSION has adopted regulations, hereinafter called "REGULATION" and attached as EXHIBIT "B" and hereby made part of this AGREEMENT, establishing formal delineation and declaration of the Southeastern Pennsylvania Ground Water Protected Area ("PROTECTED AREA") and requirements for water planning and management in the PROTECTED AREA; and

WHEREAS, the DEPARTMENT recognizes the need to prevent depletion of ground water, protect the just and equitable interests and rights of lawful users of the same water resource, and balance and reconcile alternative and conflicting uses of limited water resources in the area; and

WHEREAS, BY VIRTUE of the Act of the General Assembly No. 195, approved the 5th day of June, A.D. 1947, P.L. 422, as amended, the Act No. 275, approved the 3rd day of December, A.D. 1970, the DEPARTMENT is authorized with the approval of the Governor, to enter into contracts and other AGREEMENTS with any corporation, association, person or persons, for cooperation and assistance in planning to conserve and develop the water resources of the Commonwealth; and

WHEREAS, the DEPARTMENT desires to enter into cooperative agreement with the COMMISSION to provide for a comprehensive program to plan and manage ground water resources in the PROTECTED AREA, including the registration of existing ground-water withdrawals, consultation with project sponsors early in the planning stages of projects, and regulation and monitoring of ground-water withdrawals within the PROTECTED AREA; and,

WHEREAS, BY VIRTUE of Article 10, Sections 3.8, 3.9, and 11.5 of the Delaware River Basin Compact, ratified by the Act of July 7, 1961, P.L. 518, 32 P.S. §315.101 et. seq., the COMMISSION is authorized to perform the duties desired by the DEPARTMENT to manage the water resources in the Ground Water Protected Area;

NOW THEREFORE, for and in consideration of the foregoing, the mutual promises and agreement herein contained and of the payment to be made by the DEPARTMENT to the COMMISSION in accordance with the schedule hereinafter set forth, it is agreed as follows:

1. Cooperative Program

The parties hereto agree that, subject to the availability of appropriations and in accordance with their respective authorities, there shall be maintained a cooperative program of ground water resources management in the Southeastern Pennsylvania Ground Water Protected Area, hereinafter called "PROGRAM."

2. COMMISSION RESPONSIBILITIES & ADVISORY

- COMMISSION will exercise primary responsibility for oversight and conduct of the PROGRAM. The COMMISSION will specifically:
- a. Register existing ground water withdrawals, and regulate all new or expanded ground water withdrawals in the PROTECTED AREA in accordance with the REGULATION;
 - b. Develop and provide such registration, permit application and other forms as may be necessary to implement the REGULATION;
 - c. Conduct necessary conferences, field investigations, reviews and hearings as required to process applications for ground water withdrawals pursuant to the REGULATION;
 - d. Monitor compliance with the requirements of the REGULATION, and the terms and conditions of any permit issued thereunder, and undertake any enforcement actions deemed reasonable and necessary by the COMMISSION to assure compliance with the REGULATION and permits;
 - e. Provide or arrange for administrative and legal services in support of the PROGRAM. If the COMMISSION is required to provide legal services in connection with the PROGRAM, the Executive Director shall arrange for the necessary legal services through the General Counsel of the Commission or as the Executive Director shall otherwise determine. Before providing legal services, the Executive Director shall, with the approval of the DEPARTMENT, establish the rate arrangement for such legal services;
 - f. Maintain records of all applications, registrations, permits and other documents filed, processed or issued pursuant to the PROGRAM, together with appropriate records of all actions undertaken pursuant to the PROGRAM.

3. Department Assistance

The DEPARTMENT will provide assistance to the COMMISSION in implementation of the PROGRAM, without charge to the COMMISSION, to the extent of its legal authority, and available staff and other resources.

Specifically, the DEPARTMENT will:

- a. As agent for the COMMISSION, catalogue and record registrations of existing ground water withdrawals in the PROTECTED AREA, as required by the REGULATION, and provide the COMMISSION with records of such registrations;
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- c. Provide data processing services necessary to implement the PROGRAM as may be mutually agreed by the parties;
- d. Provide the COMMISSION with such information, plans, and data available to the DEPARTMENT as may be requested to assist the COMMISSION in implementing the PROGRAM;
- e. Provide technical and policy staff for consultation with the COMMISSION in implementation with the PROGRAM, at reasonable times consistent with their other duties and responsibilities;
- f. Provide, at the request of the General Counsel of the Commission, legal staff services to assist in prosecution of enforcement actions and other proceedings necessary to implement the REGULATION, within the limitations of available staff resources consistent with their other duties, responsibilities and enforcement priorities. For purposes of such enforcement actions and proceedings, the COMMISSION hereby designates such legal staff as Assistant Counsel to the COMMISSION.

4. Contract Costs and Budget

- a. The DEPARTMENT will reimburse the COMMISSION for the costs of necessary field and office work, and legal services undertaken by COMMISSION staff and officers directly related to this PROGRAM during the period of October 1, 1980, to June 30, 1981, but excluding any work performed which would otherwise be necessary to any other program or regulation administered by the COMMISSION, up to an amount not to exceed Eighty Thousand Dollars (\$80,000).
- b. Reimbursement for actual work performed shall be based on the following:
 - 1. Direct labor costs, for wages and salaries, at the standard General Schedule of rates for positions and grades established by the COMMISSION;
 - 2. Charges for legal services at rates approved by the Commission's Executive Director and the DEPARTMENT pursuant to paragraph 2 e. of this AGREEMENT;
 - 3. Indirect costs and administrative overhead, for employee benefits, leave, insurance, building, electricity, communications, administrative and other in-house expenses of the COMMISSION, computed at the rate approved for all federal grants pursuant to OMB Circular 74-4 of ninety-five percent (95%) of direct labor costs; and

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4. Direct expenses incurred to administer the PROGRAM, including travel, lodging, printing contracted by contractors other than the COMMISSION, meeting and hearing arrangements, publication of public notices, postage, and other costs directly attributable and identifiable with the administration of the PROGRAM. Travel expenses shall be calculated at the rates and limits established pursuant to the Travel Regulations adopted by the COMMISSION.
- c. Within thirty days of the date of approval of this AGREEMENT, the COMMISSION will submit to the DEPARTMENT a budget for administration of the PROGRAM. Expenditures for services under this AGREEMENT shall be made in accordance with the budget submitted to and approved by the DEPARTMENT. Budget modifications or rebudgets require prior written approval of the DEPARTMENT where the cumulative amount of increase or decrease during the contract period exceeds 10% for any budget category. Any rebudget which increases the total amount of the contract requires a contract amendment.

5. Payments

Payments to the COMMISSION, to reimburse expenses incurred by the COMMISSION, shall be made on a quarterly basis upon the presentation of appropriate invoices by the COMMISSION.

6. Fiscal Records

The COMMISSION agrees to maintain books, records, documents, correspondence, and other evidence pertaining to the costs and expenses of this AGREEMENT (hereinafter referred to as "the fiscal records"), to the extent and in such detail as will properly reflect all costs, direct and indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which funding has been provided under the provisions of this AGREEMENT and in accordance with generally accepted accounting principles and the DEPARTMENT'S fiscal regulations and guidelines. The fiscal records shall be retained and be made available for audit for a period of three years after final payment is made and the AGREEMENT has expired, and all other pending matters are resolved.

In accordance with section 14.11(b) of the Compact, the DEPARTMENT and the Office of Auditor General, or any of their authorized representatives shall be entitled to examine and audit the fiscal records and other documents of the COMMISSION relating to administration and performance of this AGREEMENT.

8. Deposit of Records

The original records resulting from this PROGRAM shall be deposited ultimately in the office of the COMMISSION and shall become part of the records of the COMMISSION. Copies shall be furnished to the DEPARTMENT upon request.

9. Conflict of Intent

a. Interests of Commonwealth Officers, Members, and Employees

No officer, member, agent, or employee of the Commonwealth and no member of its General Assembly who exercises any function or responsibilities under this AGREEMENT shall participate in any decision relating to this AGREEMENT which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such officer, member, agent or employee of the Commonwealth, and no member of its governing body have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof.

b. Interests of Commission Officers, Members and Employees

No officer, member, agent or employee of the COMMISSION who exercises any function or responsibilities under this AGREEMENT shall participate in any decision relating to this AGREEMENT which affects his personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested; nor shall any such officer, member, agent or employee of the COMMISSION have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof, except as otherwise provided in this AGREEMENT.

10. Indemnification - Department and Commonwealth Held Harmless

The COMMISSION agrees to indemnify, defend and save harmless the Department and Commonwealth, of Pennsylvania, its officers, agents and employees from any and all claims, demands and actions based

and agents under this AGREEMENT, or from performance of responsibilities and activities undertaken by the COMMISSION pursuant to this AGREEMENT.

11. Non-Discrimination

The terms and conditions in Exhibit A shall apply to the AGREEMENT. For purposes of Exhibit A, "Contractor" shall mean the COMMISSION. Upon receipt of satisfactory evidence of discrimination, the DEPARTMENT shall have the right to cancel the AGREEMENT.

12. Right of Inspection, Termination for Inadequate Performance

During the progress of the work all activities by either party pertaining to this PROGRAM shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this AGREEMENT upon 30 days written notice to the other party.

13. Subcontracts

No contract or agreement shall be entered into by the COMMISSION for provision of the services or activities required under paragraph 2 (other than for purchase of supplies, or standard commercial or maintenance services), without prior approval by the DEPARTMENT. Any such arrangements shall provide that the COMMISSION will retain ultimate control and responsibility for provision of such services, and any subcontractor shall be bound by all other requirements applicable to the COMMISSION in the performance of this AGREEMENT.

14. Termination - Non-Availability of Funds

This AGREEMENT may be terminated and cancelled without penalty to either party in the event that anticipated State, City, or Federal funds are not obtained or continued at a sufficient level.

15. Termination - No Fault

This AGREEMENT may be terminated by either the DEPARTMENT or the COMMISSION, at their discretion, upon 90 days written notice to the other party.

16. Period of the Agreement

This AGREEMENT shall expire June 30, 1981, unless previously terminated pursuant to the provisions of this AGREEMENT.

17. Approvals - Effective Date

- a. This AGREEMENT shall become effective upon approval and execution by the COMMISSION and the DEPARTMENT.

DEPARTMENT and the Commonwealth of Pennsylvania in accordance with Governor's Office Management Directive 215.6 as a condition precedent to any obligation to pay by the Commonwealth of Pennsylvania or by the DEPARTMENT.

IN WITNESS WHEREOF, the parties have set their hands and seals.

ATTEST:

W. Binton Whitall
Secretary

FOR THE DELAWARE RIVER BASIN
COMMISSION

DD-53-72-165872

By Donald W. Hamble
Executive Director

Russell Gray
General Counsel

ATTEST:

Lucy M. Cunko

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

By [Signature]
Secretary of the Department of
Environmental Resources

APPROVED AS TO LEGALITY AND FORM:

C. M. Feld
Assistant Attorney General

Approved:

By Ron E. Starnes
For the Office of Budget and
Administration

ME-80401

I hereby certify that funds in the amount of \$80,000.00 are available under Appropriation Symbol: 01-35-04-80-7-38-01-520-52007

Approved:

[Signature]
Governor: DRW 11/2/81

Carl Phillips
Comptroller

Date 12/22/80

NON-DISCRIMINATION CLAUSE

During the term of this contract, Contractor agrees as follows:

(1) Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age or sex.

Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

Contractor shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

(2) Contractor shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age or sex.

(3) Contractor shall send each labor union or workers' representative with which it has a collective bargaining contract or other contract or understanding, a notice of said labor union or workers' representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

(4) It shall be no defense to a finding of noncompliance with the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, or this non-discrimination clause that Contractor had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

(5) Where the practices of a union or any training

program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this non-discrimination clause, Contractor shall then employ and fill vacancies through other non-discriminatory employment procedures.

(6) Contractor shall comply with the Contract Compliance Regulations of the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49 and with all laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the non-discrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.

(7) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by the contracting agency and the Human Relations Commission, for purposes of investigation to ascertain compliance with provisions of the Contract Compliance Regulations, pursuant to §49.35 of these Regulations. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.

(8) Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.

(9) Contractor shall include the provisions of this non-discrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.

(10) The terms used in this non-discrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Ch. 49.

(11) Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania, or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.